

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROLAND BROCKRIEDE,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2007

No. 264893

Genesee Circuit Court

LC No. 05-015819-FH

Before: Saad, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of practicing dentistry without a valid license, MCL 333.16294, and sentenced to 32 to 48 months' imprisonment. He appeals as of right. We affirm.

**I. FACTS**

To successfully renew a dentistry license, a licensee must pay the appropriate fee and complete 60 hours of continuing education credits. Dental licenses must be renewed every three years. Defendant's license was to expire on August 31, 2001. Defendant timely filed his application for renewal, but underpaid the necessary fee by \$5. Defendant also noted on his renewal application that he had not completed the required continuing education credits and requested a waiver of this requirement. Thus, defendant's license renewal was effectively placed on hold, though he was permitted to practice dentistry until the license expired.

Defendant received a letter informing him that he had to complete a waiver request form and submit an explanation and supporting documentation for his waiver request and documentation of any credits he did complete. Defendant timely filed the waiver request on October 5, 2001. The request and defendant's supportive material were forwarded to the Michigan Board of Dentistry (the Board) to determine whether to grant or deny the waiver request.

Dr. James Wheeland, a member of the Board, testified that the Board approves qualified continuing education credits, which generally take the form of dentistry meetings or classes. Defendant submitted documentation of approximately 2,600 hours he spent researching a variety of legal issues, including constitutional rights, the Michigan Constitution, Michigan's rules of

evidence and court rules, the health profession section of Michigan's Public Health Code, etc. Such reading is limited to a maximum award of ten credits.

On October 24, 2001, with defendant present, the Board met to consider defendant's request. MCL 333.16205 gives the Board the authority to grant a waiver request if the licensee was disabled, in active military service, outside the continental United States, or for reasons beyond his control that the Board found to be good and sufficient. Defendant stated in his request that he was unable to complete the normal continuing education credits because of legal battles he had been involved in regarding his license for the previous five to six years. The Board denied defendant's waiver request and sent an official letter notifying the defendant of the denial on November 30, 2001.

Defendant's waiver request was denied, so he had until October 31, 2001, to renew his license by completing his continuing education credits and paying the fee shortage and a late fee. Defendant did not renew his license, and it expired for the third time since he received it in 1966. Defendant testified that the other two lapses were due to his failure to timely submit his renewal payment.

Judy Woodward testified that defendant performed dental work on her in May 2002 and did not tell her that his dental license had expired. Defendant did not contest the fact that his license had lapsed according to the state's criteria, but argues that his license was essentially valid because he was denied due process in regard to his waiver request. Defendant did not contest receiving a letter from the Board notifying him of the denial of his waiver request, but testified that he was never notified that his license had lapsed, instead stating that he found out from an Internet website in early 2002 that it had lapsed.

Defendant testified that he realized in March 2001 that he needed to complete continuing education credits for his license renewal, but, at that point, it was too late to accumulate them. Defendant's ex-wife, Karen Brockriede, stated that defendant did not receive any further communication from the state after the waiver request denial letter, and that no mention of the lapsed license appeared in dental magazines that published dentists' licensing status.

## II. MOTION TO QUASH

Defendant first argues that the trial court erred in denying his motion to quash bindover. We disagree.

### A. Standard of Review

A trial court's decision with regard to a motion to quash is reviewed for an abuse of discretion. *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002). The abuse of discretion standard is deferential and acknowledges that there is no single correct outcome; rather, there are multiple reasoned and principled outcomes. "[W]hen the trial court selects one of these principled outcomes, the trial court has not abused its discretion." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006); quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

### B. Analysis

Defendant's oral motion was not brought until the day scheduled for trial and defendant failed to secure the preliminary examination transcript. The trial court did not err by refusing to consider the motion under these circumstances. See *People v Abernathy*, 153 Mich App 567, 570-571; 396 NW2d 436 (1985). Furthermore, defendant's conviction was supported by sufficient proofs at trial. Defendant was guilty of violating MCL 333.16294 if he practiced dentistry under a lapsed license. Defendant conceded at trial that he failed to satisfy his license renewal requirements, that according to the state his license had expired, and that he performed dentistry after his license expired. Thus, if there was any error in binding defendant over for trial, the error was harmless. *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989).

### III. DUE PROCESS

Defendant next argues that the trial court erred in refusing to allow him to present evidence that he was denied due process before the licensing board. Defendant asserts that the Michigan Board of Dentistry denied him due process by terminating his license before giving him notice that his waiver request was denied and by failing to satisfy its own administrative rules. Again, we disagree.

#### A. Standard of Review

This Court reviews de novo whether a defendant was denied the right to present a defense. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

#### B. Analysis

No person may be deprived of property without due process of law. US Const, Am V; Const 1963, art 1, § 17. Here, defendant was not deprived of any property as a result of the Board's decision. The Board only denied defendant's request that completion of his continuing education credits be waived. Defendant could still have renewed his license by completing the credits and paying the appropriate fees. MCL 333.16201(2) and (3). His license lapsed by operation of law for failure to satisfy the renewal requirements, not because of the Board's decision. We find no error because defendant's defense was insufficient as a matter of law.

### IV. HEARSAY

Defendant next argues that the trial court erred by excluding certain out-of-court statements that he made in the presence of his ex-wife. Defendant does not deny that the statements were hearsay, but argues that they were admissible under MRE 801(d)(2) (admission by a party-opponent). We disagree.

#### A. Standard of Review

We review a trial court's decision to admit evidence for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

#### B. Analysis

MRE 801(d)(2) requires that the statement be offered “against a party.” Here, defendant was not seeking to admit a statement of a party-opponent, but sought to admit his own statements to support his position. Defendant’s statements were not admissible under MRE 801(d)(2) for this purpose. Therefore, the trial court did not abuse its discretion by excluding them.

## V. SENTENCING DEPARTURE

Defendant also argues that the trial court erred when it departed from the sentencing guidelines range of zero to three months, which entitled defendant to an intermediate sanction, and instead imposed a prison sentence of 32 to 48 months, with credit for 769 days served. We disagree.

### A. Standard of Review

In reviewing a sentence imposed under the statutory sentencing guidelines, the existence of a particular factor for departing from the guidelines is reviewed for clear error, the determination that a factor is objective and verifiable is reviewed de novo, and the determination that objective and verifiable factors justify a departure from the guidelines range is reviewed for an abuse of discretion. *People v Havens*, 268 Mich App 15, 18; 706 NW2d 210 (2005). An abuse of discretion exists when the sentence imposed is not within the range of principled outcomes. *Id.*

### B. Analysis

The trial court stated its reasons for the upward departure as follows:

The court exceeded the guidelines due to its concern for the safety of the public and government officials. The defendant’s arrogance and contempt for the court and people in authority also convinced this court that defendant would not be a good probationary candidate. The court would also incorporate its comments on the record. The court would also state that if any one of the reasons stated support a deviation from the guidelines, the court would depart.

In *People v Havens*, 268 Mich App 15, 17-18; 706 NW2d 210 (2005), this Court succinctly stated the legal framework that guides our review of this issue:

A trial court must impose a sentence within the sentencing guidelines range, unless it determines that a substantial and compelling reason exists to depart from the guidelines. To constitute a substantial and compelling reason for departing from the guidelines, a reason must be objective and verifiable, must irresistibly attract the attention of the court, and must be of considerable worth in deciding the length of the sentence. *People v Babcock*, 469 Mich 247, 257-258; 666 NW2d 231 (2003). To be objective and verifiable, a reason must be based on actions or occurrences external to the minds of those involved in the decision, and must be capable of being confirmed. *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). The reason for the departure must be articulated by the trial court on the record. MCL 769.34(3). A departure from the guidelines cannot be affirmed on the basis of a reason that the appellate court perceives but the trial

court did not articulate. A substantial and compelling reason articulated by the trial court as meriting a departure from the sentencing guidelines must justify the particular departure at issue. If some of the stated reasons are invalid, and the appellate court cannot ascertain whether the trial court would have departed to the same extent regardless of the invalid factors, remand for resentencing or rearticulation is necessary. *Babcock, supra* at 258-261.

Defendant argues that the trial court did not have a substantial and compelling reason to depart from the guidelines range. However, after thorough review of the record, we conclude that at least one of the trial court's reasons for its upward departure meet the standards set forth in *Babcock*. *Babcock, supra* at 258-261.

The trial court cited three reasons for its departure: (1) defendant's arrogance; (2) the fact that defendant is a threat to the safety of the public; and (3) defendant's documented history of threatening conduct toward specific government officials. We conclude that the last factor is substantial and compelling; therefore, the trial court did not err.

According to the evidence before the trial court, the defendant long believed that the government was persecuting him and that there was a vast conspiracy against him. Before his arrest, defendant had armed himself in the event of an attack by the government and had moved into his office, which was equipped with high-tech surveillance equipment. At the time he was arrested at his office, defendant possessed two loaded semi-automatic rifles. Defendant also bragged to a cellmate that he held off the police with one of his weapons. Defendant also expressed to his cellmates disdain for certain judges, attorneys, and law enforcement personnel and his desire to see them killed. He inquired if his cellmates knew anyone he could hire to accomplish the feat. Considering this evidence, the trial court did not abuse its discretion in finding that defendant's threat to certain government and law enforcement officials was a substantial and compelling reason to depart upward from the sentencing guidelines range.

Although the trial court considered factors that were not objective and verifiable—defendant's arrogance and the fact that he is a threat to the safety of the public<sup>1</sup>—resentencing is not required because the court made clear that it intended to depart from the guidelines as long as “any one of the reasons stated support a deviation from the guidelines.” *Babcock, supra* at 260-261.

Finally, defendant argues that the extent of the departure imposed is disproportionate. However, this issue is moot because defendant has already served his minimum sentence. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

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<sup>1</sup> “[T]he trial court's conclusion that defendant was a danger to himself and the public was not itself an objective and verifiable factor.” *People v Solmonson*, 261 Mich App 657, 670; 683 NW2d 761 (2004)

Affirmed.

/s/ Henry William Saad

/s/ Mark J. Cavanagh

/s/ Bill Schuette